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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 DANIEL JAY PEREZ,

7 Plaintiff,

8 v.

9 WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, et al.,

10 Defendants.

Case No. 3:18-cv-05127 RBL-TLF

ORDER ADOPTING IN PART THE
REPORT AND
RECOMMENDATION AND
DISMISSING COMPLAINT AS
TIME-BARRED

11 The Court, having reviewed the Report and Recommendation of Judge Theresa L. Fricke,
12 United States Magistrate Judge, Defendants' objections to the report and recommendation (Dkt.
13 34), and the remaining record, does hereby find and ORDER:

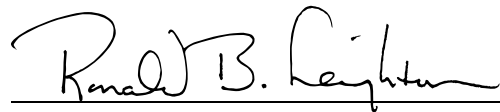
- 14 (1) The Court adopts the Report and Recommendation IN PART;
- 15 (2) Defendants' motion to dismiss (Dkt. 29) is GRANTED: plaintiff's claims against
16 defendants Saunders and Collins are DISMISSED with prejudice, and plaintiff's
17 claims against defendants Briones, White, Sinclair, Wright, Pacholke, Warner,
18 Herzog, and Gage are DISMISSED without prejudice;
- 19 (3) The Court DECLINES to adopt Report and Recommendation with respect to its
20 consideration of the statute of limitations;
- 21 (4) The Court is persuaded by Defendants' objections that Plaintiff was actively aware
22 of his housing status, was able to register his disagreement with his placement in
23 segregation and pursue less-restrictive housing, and was actively able to participate
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1 in prison programing and remain infraction free during the time that he claims he
2 was disabled for purposes of tolling the statute of limitations under RCW 4.16.190.
3 See Dkt. 34. Because Plaintiff fails to demonstrate that he was disabled, tolling the
4 statute of limitations is not appropriate and Defendants' motion to dismiss the
5 complaint as time-barred (Dkt. 29) is GRANTED and the Complaint is
6 DISMISSED WITH PREJUDICE;

7 (5) Plaintiff's IFP status should continue for his appeal should he decide to pursue an
8 appeal;

9 (6) the Clerk is directed to send copies of this Order to petitioner, to Magistrate Judge
10 Theresa L. Fricke and to any other party that has appeared in this action.

11 Dated this 6th day of August, 2018.

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15 Ronald B. Leighton
16 United States District Judge
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